Supreme Court
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No. 97-228

In The

Supreme Court of the United States

October Term, 1996

GAMMA-10 PLASTICS, INC.,

Petitioner,

vs.

AMERICAN PRESIDENT LINES, LTD. and
AMERICAN PRESIDENT COMPANIES, LTD.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit**

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Respondents submit that neither of the questions framed by the Petitioner is fairly presented by this case and neither presents a justiciable issue.

LIST OF PARTIES

Gamma-10 Plastics, Inc. is a Minnesota corporation having no parent, subsidiaries or affiliates to the knowledge of the Respondent. Gamma's stock is no longer publicly traded.

American President Companies, Ltd. is a publicly held company, the stock of which is traded on the New York Stock Exchange. Its subsidiaries are as follows:

American President Lines, Ltd.
American Consolidation Services, Ltd.
American President Trucking Company, Ltd.
APL Information Services, Ltd.
APL Land Transport Services, Inc.
Eagle Marine Services, Ltd.
Natomas Real Estate Company

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 105 F.3d 387 (8th Cir. 1997) and is reprinted in the Petitioner's Appendix at A1 – A11. The decision of the court of appeals, filed March 10, 1997, denying the petition for rehearing, is unreported but is reprinted in Petitioner's Appendix at A12. The district court's Order and Memorandum Opinion filed August 14, 1995, denying Petitioner's motion for a new trial, is unreported and is reprinted in the Petitioner's Appendix at A13 – A17. The district court's Judgment filed June 8, 1995, is reprinted in the Petitioner's Appendix at A18. The jury's verdict on special interrogatories is reproduced in Respondents' Appendix, *infra*, at A1.

STATEMENT OF THE CASE

Petitioner Gamma-10 Plastics, Inc. (hereinafter "Gamma"), an exporter of recycled poly-propylene resin, claimed that Respondents American President Lines, Ltd. and American President Companies, Ltd. (hereinafter jointly referred to as "APL") lost two of Gamma's shipments of resins in the ports of Whampoa and Shanghai, Peoples Republic of China ("PRC"), and that as a result, Gamma was unable to sell those shipments and another two shipments being held by APL at Gamma's request in the ports of Hong Kong and San Pedro, California.

The evidence proved, however, that Gamma had misrepresented its recycled product as "virgin" plastic resin and when its Hong Kong buyer's customers in the PRC commenced using the first lots (carried earlier by an APL

competitor), they found the resins produced plastic products which were brittle and easily broken. The PRC end users of the resin then refused to take delivery of any of the four shipments already in APL's custody. With no consignees to receive them, the four shipments became frustrated: the first in Whampoa, the second in Shanghai, the third in Hong Kong, and the fourth in San Pedro, California.

Speculating that it would be able to find a substitute buyer, Gamma specifically ordered APL to transship the second shipment from Hong Kong to Shanghai. Gamma failed to promptly find a buyer, however, and when no consignee timely appeared to take delivery, the Shanghai Port Authority took custody of the goods and devanned them. Meanwhile, as time passed and Gamma could find no customers, the resin market price in the PRC was dropping dramatically. None of the four shipments were lost, as Gamma had claimed, and it ultimately sold the first three in the PRC and the fourth in Indonesia.

Gamma's claims against APL with reference to the first (Whampoa) shipment were declared to be time barred by the Eighth Circuit on the first appeal. 32 F.3d 1244, 1250-54 (8th Cir. 1994).

On retrial, the jury unanimously found for APL, specifically that APL did not breach its contract and was not negligent in any of the respects claimed by Gamma. Nevertheless, Gamma continues to allege as if it were the fact that APL improperly devanned[1] the containers before

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[1] "Devanned" is a trade term meaning to have removed cargo from containers.

the Shanghai shipment was delivered there, a contention the jury resolved against Gamma. Petition at pp. 3-4. Of the many allegations made by Gamma, whether or not APL devanned any of the five Shanghai containers before they were delivered to that port was the most thoroughly litigated factual issue of the case.

Gamma relied solely on some erroneous computer entries made on a container tracking record by APL Hong Kong clerical employees. APL's evidence showed that the entries were not made contemporaneously with the events and that some of the erroneous activity entries had been deleted from the same report on which they were recorded.[2] APL's Hong Kong resident PRC manager, K. K. Cheng, testified unequivocally that APL never carried non-containerized cargo, and, in particular, that the feeder vessel MILD OCEAN, which carried the goods from Hong Kong to Shanghai, never carried non-containerized cargo; and, that goods were delivered to Shanghai in the same containers in which the shipper packed them.[3] Chen Chou Hua, a former employee of Penavico, the PRC state-owned shipping agent in Shanghai, testified that the subject containers arrived full in Shanghai.[4] Alan Hsia, APL's Los Angeles based China market sales representative testified that Victor Chiang, president of Gamma's prospective substitute buyer, Vic International, reported to him in December, 1988, that he and Gamma's president had concluded a trip to China and had found five containers in

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[2] Plaintiff's Trial Exhibits 38, 41, 42, 43, and 45.

[3] Trial Transcript, May 15, 1995, pp. 23-32, 102.

[4] Trial Transcript Vol. XXIX pp. 4297-4298, 4325, 4258.

Huang Pu (Whampoa), five containers in Shanghai and six containers in Hong Kong.[5]

No witness testified the goods were in a devanned condition before they were in the custody of the Shanghai Port Authority. No witness testified that the devanning of the goods by the Shanghai Port Authority resulted in any contamination of the goods or other damage. Nevertheless, Gamma claims "[t]he devanning caused the subsequent contamination of the entire shipment in Shanghai before the consignee accepted delivery. The consignee therefore rejected the shipment." Petition at p. 4. There was no evidence that there even was a "consignee" at any time prior to the ultimate sale in the summer of 1989, more than nine months after the goods had been delivered to Shanghai.

At page 4 of its Petition and within its Statement of the Case, Gamma represents that "APL's reports and testimony also confirm another of Gamma-10's theories of liability; namely that although the Shanghai port authority received custody of the goods, APL retained control over the goods at all material times." APL does not comprehend what Gamma means by the statement that "APL retained control over the goods at all material times." But, whatever it means, this is the first time in over six years of litigation including two trials and two appeals that this theory has been asserted. Furthermore, APL knows of no factual support in the record for such a statement.

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[5] APL Trial Exhibit 71; Trial Transcript Vol. XXV, p. 3646.

At trial, Gamma thoroughly litigated and argued its claims that APL was negligent and breached its contract by devanning the goods prior to their delivery at Shanghai. The jury answered special interrogatories (See Appendix 1, *infra*) specifically finding that APL was not negligent and did not breach its contract of carriage, thus impliedly finding that APL did not devan any goods prior to their arrival at Shanghai. The jury's findings necessarily included its determination that APL did not exercise any "control" over the goods in any sense or context that made it responsible for the Shanghai Port Authority.

On its motion for a new trial, Gamma argued that the jury's findings were against the weight of the evidence, but the district court stated:

> As to the sufficiency of the evidence, the Court finds that the jury verdict was supported by the clear weight of the evidence and did not result in an injustice.

Petitioner's Appendix at A14.

Gamma unsuccessfully moved for a third trial on several grounds. The only issue it preserved for appeal, however, is stated in its Brief of Appellant as follows:

> Where the evidence showed that Respondent APL, the carrier, broke Appellant Gamma 10's cargo out of its sealed containers prior to delivery to the designated port of Shanghai and contrary to the bill of lading and that such action was a proximate cause of the shipper's [Gamma 10's] loss, did the trial court err in instructing the jury that delivery of the cargo to

the Chinese Port Authority was nonetheless a proper delivery?

Gamma claimed that the trial judge erred in not having inserted the word "containerized" where we supply it in bracketed italics in the following instruction:

Jury Instruction No. 21:

A carrier such as American President Lines owes to a shipper such as Gamma-10 the duty to exercise reasonable care to protect the shipper's cargo while the cargo is in its or its agents' possession. A carrier also owes a shipper the duty to "properly deliver" the cargo.

The bills of lading in this case were "through bills" requiring delivery to a party in possession of an original bill of lading (the consignee). Therefore, in this case the duty of proper delivery required American President Lines either to deliver the cargo to the consignee or to deliver it to a fit wharf and to take reasonable steps to safeguard it until the shipper or the consignee had a reasonable opportunity to claim the cargo. But if you find that APL proved by the greater weight of the evidence that (1) the Chinese port practices, customs, regulations, or laws required American President Lines to relinquish the [*containerized*] cargo to a port authority; (2) APL in fact delivered Gamma-10's goods into the custody of the port authority; (3) APL acted at all times in compliance with the port law and port regulations of the foreign port; and (4) the loss or damage was accomplished while the goods were in the custody of the foreign port authority officials, then American President Lines is not liable for any damage or loss that

occurred after the port authority took possession.

The Court of Appeals held only that this instruction, taken with the instructions as a whole, fairly presented Gamma's theory and was not reversible error. 105 F.3d at 389-90. It is of that unremarkable decision that Gamma now seeks this Court's review.

REASONS FOR DENYING THE WRIT

I. GAMMA'S FIRST QUESTION FAILS TO PRESENT A JUSTICIABLE ISSUE BECAUSE IT IS CONTINGENT UPON THE TRUTH OF A PREMISE OF FACT FOUND BY THE JURY TO BE FALSE.

Gamma's Petition purports to present two questions. The first is:

> Whether the *Tan Hi* doctrine[6] may be invoked to insulate a carrier from liability for subsequent damage to goods delivered into the custody of government agents in accordance with the law of the foreign port, when the damage is caused by the carrier's own mishandling

[6] The so called "*Tan Hi* doctrine" is derived from the case of *Tan Hi v. U.S.*, 94 F.Supp. 432. Following the Supreme Court's holding in *Constable v. National Steamship Company*, 1894, 154 U.S. 51 at page 63, that "No rule is better settled than that the delivery must be according to the custom and usage of the port, and such delivery will discharge the carrier of his responsibility," the *Tan Hi* court held that the common law elements of a "proper" delivery apply only when the custom, regulations, or the law of the port do not otherwise provide.

> of the goods prior to their delivery into the custody of the local government agents.

Gamma's first question is not present at all because it is conditioned upon the erroneous assumption of fact that APL "mishandled" the goods by devanning the Shanghai bound containers of plastic resin before their delivery to that port. The jury rejected this assumption as a matter of fact.

Gamma's jury instruction (No. 22) listed Gamma's contentions on the issue of APL's negligence including:

> 2. American President Lines or its agents failed to take reasonable steps to safeguard Gamma-10's cargo between September and December of 1988 by emptying the cargo from sealed containers;
>
> 4. American President Lines or its agents violated port law, port practices, and port regulations in China by devanning, or emptying, Gamma-10's goods prior to the arrival of a consignee;[7]

Gamma's burden of proof instruction, no. 27, provided:

> In order to prove the essential elements of its claim, the burden is on Gamma-10 to establish, by the greater weight of the evidence in the case, the following facts:
>
> **FIRST**, that American President Lines or its agents were negligent in one or more of the particulars alleged in instruction 22; and

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[7] Trial Transcript Vol. XXXIV, pp. 4858-59.

> **SECOND**, that the negligence of American President Lines or its agents was a proximate cause of the injury and consequent damage sustained by Gamma-10.[8]

A proximate cause instruction, to which no objection was taken, was also given.[9]

Gamma's jury instruction on the issue of APL's breach of contract included:

> . . . Gamma 10 claims that American President Lines breached the contract of carriage by failing to properly deliver and safeguard the cargo, by devanning containers in a container yard to container yard contract before the consignee claimed the cargo; and by breaking the seals identified on the bill of lading without the permission of Gamma 10 or its consignee.[10]

In closing, Gamma's counsel argued that APL "dumped out the containers, which, in and of itself, was a breach of contract and negligence" and "the fact that they violated port law by dumping those containers before they got to Shanghai is a presumption of negligence."[11]

The jury returned its verdict on special interrogatories. App. 1. It answered "no" to the question of whether APL was negligent and "no" to the question of whether APL breached its contract of carriage. When considered in light of the above quoted jury instructions and Gamma's counsel's argument, the verdict necessarily

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[8] Trial Transcript Vol. XXXIV, p. 4862.

[9] Trial Transcript Vol. XXXIV, pp. 4862-63.

[10] Trial Transcript Vol. XXXIV, pp. 4863-64.

[11] Trial Transcript Vol. XXXIV, pp. 4815-16.

included findings by the jury that APL did not devan the subject containers or otherwise negligently handle them, or breach any of its statutory, common law or contractual duties. Therefore, conditioned as it is upon an erroneous premise, Gamma's first question is not presented and fails to establish the existence of a justiciable case or controversy. A Writ of Certiorari to examine the first question would be clearly inappropriate.

II. THE DECISION OF THE EIGHTH CIRCUIT IS NOT IN CONFLICT WITH THE DECISIONS OF THE UNITED STATES COURTS OF APPEALS FOR THE FIFTH AND NINTH CIRCUITS.

The Eighth Circuit concludes in its opinion that:

> . . . when read in their entirety, the instructions were not erroneous. They did not preclude the jury from finding APL liable on Gamma 10's theory that APL devanned the goods before their arrival in Shanghai, but rather required the jury to consider that possibility.
>
> . . .
>
> Taken as a whole, these instructions (paragraphs 2 and 4 of Instruction no. 22) clearly provided an avenue for the jury to find negligence based on Gamma 10's allegation that APL devanned the goods prior to their arrival in Shanghai.
>
> Similarly, with regard to the breach of contract claim, the jury was informed of Gamma 10's allegations that APL had breached its contract by failing to properly deliver and safeguard, by devanning the containers prior to the consignees' taking possession, and by breaking the seals on the containers. Thus, the jury was

> fully apprised of Gamma 10's theory regarding breach of contract and was bound to find APL in breach of its contract if it concluded that Gamma 10's allegations were true.

105 F.3d 387 at 389-90.

Gamma attempts to create a conflict of law among the Circuit Courts of Appeal by claiming that "[t]he Eighth Circuit's affirmance means that a carrier is insulated from liability for damage to cargo if the damage **occurs** after a required delivery to foreign government agents, even though the damage was **caused** by the carrier's pre-delivery negligence and breach of contract." Petition at pp. 6-7. Nothing in the opinion of the Eighth Circuit can be construed as holding that a carrier who is negligent or breaches its contract of carriage is relieved of liability, if such negligence or breach proximately causes damage to cargo while subsequently in the custody of a government authority. On the contrary, as the passage above quoted shows, the basis of the Court's affirmance was that the instructions, taken as a whole, preserved Gamma's right of recovery, if it proved negligence or breach on the part of APL, which caused subsequent damage to the goods while they were in the custody of the Shanghai Port Authority.

Similarly, nothing in the Court's opinion can be construed as an interpretation by the Eighth Circuit of the *Tan Hi* doctrine that a carrier is relieved from liability for negligent mistreatment of cargo if the cargo is delivered into the hands of a foreign port authority in accordance with foreign law, and the damage caused by the carrier's mistreatment develops after delivery to the foreign port authority. The Eighth Circuit neither expressed nor

implied any such thing and Gamma's contention to the contrary is belied by simply reading the opinion.

The Eighth Circuit does not even mention or cite *Tan Hi*; nevertheless, Gamma claims that its "interpretation of the *Tan Hi* doctrine is in direct conflict with the basic underpinnings of the doctrine as interpreted by the Fifth and Ninth Circuit Courts of Appeals." The Fifth Circuit case Gamma relies upon is *F. J. Walker Ltd. v. M/V* LEMONCORE, 561 F.2d 1138 (5th Cir. 1977). Gamma cites LEMONCORE for the proposition that the *Tan Hi* doctrine did not shield the carrier from liability, despite surrender of cargo to a foreign port authority, because the carrier could have exercised sufficient control over the discharge of cargo to prevent damage. However, no governmental authority was involved in the LEMONCORE case, and *Tan Hi* was cited only for the proposition that under the Harter Act, proper delivery occurred when made consistently with the customs of the port. The carrier did not claim the benefit of the *Tan Hi* doctrine, and that issue was not before the court. Clearly, a conflict with the *Tan Hi* doctrine cannot be generated between this case and LEMONCORE when neither case relied upon or involved the doctrine.

In LEMONCORE, the shipowner hurried to discharge the ship of its frozen meat cargo at a Tampa, Florida commercial terminal in anticipation of a longshoremen strike even though it knew discharge was being accomplished faster than the stevedore could remove the frozen meat from ship's side to refrigerated trucks. The meat thawed on the dock and the shipowner was found liable on these two grounds: it did not discharge the cargo to a fit and proper wharf; and, it was negligent in not discharging the

cargo in accordance with the custom and usage of the port because the bedloading of trucks by hand, a common occurrence at the port, was much slower than the ship's rapid discharge permitted. "[T]he carrier's refusal to permit this temporary cessation of discharge violated the customs of the port." 561 F.2d at 1144. No reasonable mind can find any conflict between *Lemoncore* and the Eighth Circuit's opinion in this case as the law of the two cases is consistent.

Gamma's apparent reliance upon the Fifth Circuit's decision in *Allstate Ins. Co. v. Imparca Lines*, 646 F.2d 166 (5th Cir. 1981) is baffling because it fully supports APL in this case. Imparca Lines discharged a container load of electronic goods in Venezuela where the National Institute of Ports ("INP") is responsible for all operations of a seaport including stevedoring, warehousing and receiving and delivering cargo. The container was discharged from the ship but could not be found by INP. The district court found for the cargo underwriter and against the ship, holding that the container had not been delivered.

The Fifth Circuit, however, found the district court's findings of fact to be inherently inconsistent. It reversed and remanded the case with instructions to dismiss the shipowner. It concluded that the finding that the container had been placed on the dock was supported by the evidence, but that the district court erred in its legal conclusion that the container was not "delivered." The court cited *Tan Hi* and *Lemoncore* for the proposition that "a carrier's delivery to persons charged by the law and usage of the port with the duty to receive cargo and

distribute it to the consignee is a good delivery on the part of the carrier."[12] The Court reasoned:

> The evidence in this case shows that the INP is an organization of the Venezuelan government which has the sole responsibility of unloading, storing and delivering all cargo destined for Puerto Cabello. In other words, once the unloading of the cargo from the vessel commenced, the carrier had nothing further to do with the cargo. And, indeed, the evidence shows that the carrier was powerless to interfere with the exclusive operation of the port by the INP.

The court then held:

> We conclude that the point of delivery as defined by the bill of lading coincides with the point of delivery as defined by the Harter Act and the case law. In this case, the delivery occurred, at the latest, when the cargo was placed on the dock in the custody of INP the point described in the bill of lading which coincides with the custom and usage of delivery at that port the point described by the case law. We conclude the evidence overwhelmingly supports the district court's finding of fact that the container was unloaded from the vessel and placed on the dock in the control of INP. This constitutes delivery as a matter of law, in accordance with the bill of lading and the custom and usage of the port. The district court's legal conclusion that delivery never occurred is thus in error, and is accordingly reversed. Delivery had taken place, and the carrier's responsibility for the

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[12] 561 F.2d at 1144.

> goods was discharged before the container disappeared, and accordingly, the district court shall on remand enter judgment for Imparca.

646 F.2d at 168-169. Clearly, there is nothing in the Eighth Circuit's opinion in this case which conflicts with the above holding in *Allstate v. Imparca Line*, because in both cases the carriers were not found to have been negligent and in both cases the carriers were found to have made proper deliveries in accordance with the customs of the respective ports.

The Ninth Circuit case claimed by Gamma to be in conflict with the Eighth Circuit's decision in this case is *Isthmian Steamship Co. v. California Spray-Chemical Corp.*, 300 F.2d 41, 46 (9th Cir. 1962). *Isthmian*, however, is not at all in conflict with the Eighth Circuit, and furthermore, it is inapposite to this case. *Isthmian* did not involve a foreign governmental port authority or agency, but rather the validity of a carrier's clause in its bill of lading which purported to give it the liberty of discharging cargo to barges when no wharf was available. In *Isthmian*, the shipowner discharged the goods into an unseaworthy barge for on-carriage to shore. The shipowner was found to have been negligent for discharging the cargo into an unseaworthy barge and liable for the subsequent loss of cargo when the unseaworthy barge sank. The Ninth Circuit held that the delivery had not been accomplished by landing the cargo into the barge because the carrier had not demanded receipts for the cargo from the lightering company or demanded surrender of the negotiable order bill of lading. Again, it is clear from the Eighth Circuit's decision that if Gamma had proven that APL was guilty

of some negligence or breach of contract, which manifested itself in damage to the cargo after delivery to the Shanghai container yard, APL would have been found liable. In *Isthmian*, pre-delivery negligence on the part of the carrier was found, in this case it was not. These distinguishing facts further preclude any possibility that the Eighth Circuit's decision is in conflict with *Isthmian*.

Having shown that there are no conflicts between the decisions of the the Fifth and Ninth Circuit cases cited by Gamma and the decision of the Eighth Circuit in this case, there is no need or utility in the Supreme Court's granting a Writ of Certiorari. There is simply no uncertainty in the law requiring any reconciliation.

III. THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT HAS NOT DECIDED ANY IMPORTANT QUESTION OF FEDERAL LAW.

Gamma's second question is:

> 2. Whether the *Tan Hi* doctrine may be invoked to insulate a carrier from liability for subsequent damage to goods delivered in the custody of government agents in accordance with the law of the foreign port, when the carrier retains control (but not custody) over the goods at all times.

Gamma does not explain what it means by the phrase: "when the carrier retains control (but not custody) over the goods at all times," and it refers to no evidence which would support the contention that APL

retained "control" of the goods after delivery to the container yard in Shanghai. This confused "issue" is being raised for the first time in Gamma's Petition for a Writ of Certiorari. No issue was presented below that involved any alleged liability by reason of any continuing "control" on the part of APL. That contention does not appear in Gamma's Complaint or Amended Complaint; it was not litigated in either the first or second trial; and, it was neither briefed nor argued in either the first or the second appeal. The Eighth Circuit's decision, from which Gamma's Petition is spawned, does not address the question because it was never raised. Absent exceptional circumstances, the Supreme Court will not consider an argument which was not raised in the district court or in the court of appeals. *U.S. v. Lovasco*, 97 S.Ct. 2044, 2048 n. 7, 431 U.S. 783, 788 n 7, 52 L.Ed.2d 752 (1977). No exceptional circumstances having been shown, the Court should disregard Petitioner's second question.

The Eighth Circuit did not hold that carriers are exonerated from their own negligence by relinquishing cargo to government authorities as required by local law or the custom and usage of the port.

The definition of "delivery" *per se* was not an issue in this case below and the Eighth Circuit did not define "delivery." It would be inappropriate for the Supreme Court to undertake to "settle the meaning of the federal statutory rule for allocating risk between carriers and shippers," as requested at page 13 of Gamma's Petition, because it could only do so in an advisory or hypothetical context. Furthermore, what constitutes a proper delivery may vary by contract or custom and usage of the port so long as no contractual definition runs afoul of the Harter

Act[13] or the Carriage of Goods by Sea Act.[14] It would be virtually impossible for any court to define what constitutes a proper delivery of cargo in the abstract, for such definition would have to encompass all cargoes, in all trades, to all ports. Not only would it be impossible as a practical matter, but it would impinge prospectively upon the plenary power of the Congress under the Commerce Clause[15] to enact or amend laws regarding such matters.

CONCLUSION

For the foregoing reasons, respondents respectfully request that the Petition for a Writ of Certiorari be denied.

Dated: August 28, 1997.

Respectfully submitted,

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[13] 46 U.S.C. §190 et seq.

[14] 46 U.S.C. §1300, et seq.

[15] United States Constitution, Article 1, §8.

APPENDIX 1

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Gamma 10 Plastics, Inc.,

Plaintiff,

v.

American President Lines, Ltd. and American President Companies, Ltd.,

Defendants.

Civil No. 3-90-428

SPECIAL VERDICT FORM

We, the jury, in the above-entitled action, for our special verdict answer the questions submitted to us as follows:

QUESTION NO. 1 Do you find from the greater weight of the evidence that the defendants or their agents acted negligently in performing any one or more of the specific acts of negligence alleged by Gamma 10?

YES _ **NO** X

If you answered "No" to Question No. 1, do not answer Question No. 2.

QUESTION NO. 2 Do you find from the greater weight of the evidence that the defendants' negligence was either the sole proximate cause or a contributing proximate cause of the damages Gamma 10 claims?

YES _ NO _

QUESTION NO. 3 Do you find from the greater weight of the evidence that the defendants or their agents breached their contract for the carriage of Gamma 10's goods to China during 1988?

YES _ NO X

QUESTION NO. 4 If you answered "Yes" to Questions 1 and 2, or 3, what amount, if any, will compensate Gamma 10 for the damages it suffered as a result of the defendants' negligence or breach of contract?

$ (NA)

QUESTION NO. 5 Do you find from the greater weight of the evidence that the defendants acted with a deliberate or wanton disregard for the plaintiff's rights?

YES _ NO X

DATED: June 7, 1995

/s/ Illegible
Foreperson

Concurring jurors sign below only if there is a 8/9 verdict:

_____ _____

_____ _____

_____ _____

_____ _____

_____